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IN THE

Supreme Court of the United States

No. ..860

MILES H. ROBINSON, M.D.,
Petitioner,

vs.

R. W. STEVENS, M.D., ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MILES H. ROBINSON, M.D.,
For Petitioner, in Propria Persona.

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Miles H. Robinson, M.D., prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case on November 20, 1957.

CITATION TO OPINION BELOW

The opinion in the United States Court of Appeals for the Ninth Circuit is printed in the Appendix attached hereto.

JURISDICTION

The Opinion of the United States Court of Appeals for the Ninth Circuit was filed on November 20, 1957. Petition to stay mandate and to tax unnecessary costs of printing record against appellees was filed on December 23, 1957, and was denied on December 31, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. in the sections which deal with the rights of citizens under the Constitution of the United States; and under Rule 38 of this Court which concerns decisions on "important questions of local law probably in conflict with applicable local decisions," and decisions which have "so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision."

QUESTIONS PRESENTED

1. Did the defendants have a monopoly of the medical business in Walla Walla, Washington, and seek to maintain and enlarge that monopoly by conspiring to destroy the medical practice of Petitioner in violation of the Constitution of Washington state and the Sherman and Clayton anti-trust laws?

2. Did the defendant American Medical Association do business in the State of Washington making it subject to the jurisdiction of a United States District Court of that state?

3. In the revolutionary and rapidly advancing new system of prepaid medical insurance operating financially under the control of third parties other than patient and physician, is it in the public interest to permit these third parties to control individual physicians including Petitioner by a private judicial system which violates most of the accepted principles of common justice, including the principle contained in the Fifth Amendment of the United States Constitution which holds that a citizen may not be deprived of his property without due process of law?

4. Did the defendants expel Petitioner in order to destroy his right of free speech on medical matters, a right guaranteed by the First Amendment of the Constitution of the United States?

5. Did the United States Court of Appeals for the Ninth Circuit so far depart from the usual course of judicial proceedings, when it ordered Petitioner to pay $7,050.00 for printing of the entire trial transcript, as to justify the scrutiny of this Honorable Court?

6. When the supreme court of Medicine, the Judicial Council of the American Medical Association, held that the procedures used in expelling Petitioner were improper and that the expulsion was "invalid and void" and that the judicial body of the state medical association had thereby "disqualified itself as an impartial tribunal," was not that ruling alone sufficient grounds for overruling defendants' motion to dismiss at close of plaintiff's case?

7. Even in the absence of proof of conspiracy, were not the defendants liable for a wrongful expulsion?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1. Sections 1 and 2 of the Sherman Anti-Trust Act of July 2, 1890, Chapter 647, Sections 1 and 2, 26 Stat. 209, 15 U.S.C. 1 and 2. The relevant portions of these sections are as follows:

> "Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal.
>
> "Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person, to monopolize any part of the trade or commerce among the several states, or with foreign nations shall be deemed guilty of a misdemeaner.***"

2. Article XII, para. 22 of the Constitution of the state of Washington which reads as follows:

> "Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees, or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever, for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose may declare a forfeiture of their franchise."

The quoted constitutional provision expresses the public policy of this state on the subject of monopolies and restraints on competition. This was made clear in *American*

Export Door Corp. v. John A. Gauger Co., 154 Wash. 514, 519, 283 Pac. 462, where it was said:

> "Without going into history, it is sufficient to say that our constitutional provision above quoted is simply a recognition of the common law on the subject reduced to definite terms and made the fundamental law of the state. It was adopted before the enactment of the Sherman Anti-Trust law by the Congress of the nation, and it stands as the complete and wholly unobscured guide pointing out the plain pathway of public policy in this state."

3. The Fifth Amendment of the Constitution of the United States, the applicable portion of which states:

> "* * * No person shall be * * * deprived of * * * property, without due process of law * * *".

4. The First Amendment of the Constitution of the United States which guarantees the right of free speech.

5. The Sixth Amendment of the Constitution of the United States, the applicable portion of which states:

> "* * * the accused shall enjoy the right to a speedy * * * trial * * * and to be informed of the nature and cause of accusation * * *."

STATEMENT

In April, 1950, defendant R. W. Stevens, M.D. and other doctor defendants organized a so-called Grievance Committee, the membership of which committee was, without precedent (Ex. 32; R. 1285-6)* kept secret from the general membership of the defendant Walla Walla Valley Medical Society including Petitioner (Ex. 446, Minutes of 7/18/50).

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* Figures in parentheses (R. . . ; Ex. . .) refer to page of printed record and to numbered exhibits. Except as otherwise noted, all references are to testimony of defendants and to admitted documents.

The doctor members of the committee were appointed by the Society president, and its executive secretary was the lay manager of the defendant Walla Walla Valley Medical Service Corporation (Medical Bureau), an organization writing prepaid medical contracts, owned and operated by members of the medical Society. This committee assumed broad investigative and disciplinary powers (Ex. 45, para. 5; Ex. 71, para. 3) hitherto reserved to the elected Society trustees under the Society's Constitution and By-Laws (Ex. 429, By-Laws, Chap. II). The committee was the local arm of a new disciplinary system sponsored and supervised (Ex. 97, p. 38-40) by the defendant American Medical Association. Decisions of the local committee could be apealed direct to a state Grievance Committee (R. 1236, 1602), the decisions of which could in turn be appealed to the Judicial Council of the AMA (Ex. 147).

This new Grievance Committee system ran parallel to the regular disciplinary system of the medical hierarchy already laid down in the respective local, state, and national medical Constitutions and By-Laws. Defendants admit that the regular disciplinary system contained procedures which were "adequate, fair, and democratic" (Answer of defendant doctors, para. XVIII), and even the members of the state Grievance Committee were later critical of how the Walla Walla secret Grievance Committee obtained and processed the complaints against Petitioner on which he was expelled:

> "We are all attempting to answer that to give your Committee the power they did take. We are trying to find some means whereby the Committee could take the power they did take." (Ex. 97, p. 41, transcript of state Grievance Committee hearing.)
>
> "Does not agree with organization and procedures of the Walla Walla County Medical Society Grievance

Committee." (Ex. 98, p. 1, record of opinions of committee members in Minutes of state Grievance Committee.)

On August 11, 1950 Petitioner wrote a letter to members of the Society criticizing the operations of the Medical Bureau, which criticism aroused both appreciation and resentment of Society members, among them the president of Bureau, C. B. Moore, M.D., who replied with a five page letter on September 21, 1950 to Petitioner in which he stated:

> "In response to your letter, which shows searching, exhaustive thought, I thought you might like to receive my countering ideas. * * * I regret that you feel it necessary to break our united front in this effort." (Ex. 13.)

And in another letter to Petitioner dated January 8, 1951:

> "Why don't you quit bothering members of the Society with these letters of yours? * * * I suggest you might be happier if you resigned from the Society, as you already have from the Bureau." (Ex. 64.)

The Medical Bureau had a virtual monopoly of prepaid medical care business in the community by virtue of the fact that all state and county medical welfare and veteran outpatient cases were handled through it alone (Ex. 409), and its doctor members were forbidden in the agreement they signed with the Bureau to work for any other similar organization:

> "The physician agrees that this undertaking excludes him directly or indirectly, by contract or otherwise, rendering professional services for any individual, corporation, partnership, or concern having like or similar objects to those of this corporation

and/or for any individual, corporation, partnership or concern which is or may be in competition with this corporation." (Ex. 409.)

The defendants were extremely anxious to support the local Bureau in order to ward off "socialized medicine:"

"Q. In any meeting of the Society or Bureau, did you ever hear anyone say that socialized medicine is coming? A. It has been said for years, so I suppose it was said in this place too. Q. Do you recall any one stating that 'We can not hope to retain control unless we have an organization ready on the spot to take over any new program' A. That's been the main purpose of the Bureau for many years." (Ex. 294, p. 157-8, testimony of defendant Keyes.)

"* * * we had to do everything we could to make the Bureau survive. And we have done that very nicely at the present time, pulled our bureau out of the difficulties." (R. 1414, testimony of defendant Yengling.)

On August 15, 1950, Petitioner resigned from the defendant Walla Walla Valley Medical Service Corporation (Medical Bureau). Eight days later, the lay manager of this Medical Bureau, C. E. Fullerton, who was also executive secretary of the aforesaid secret Grievance Committee and also executive secretary of the medical Society, refused to approve payment to Petitioner of a bill for $17.00 for services he had rendered earlier to a patient client of the Bureau when Petitioner was still a member of the Bureau (Ex. 9). In over a year working for the Bureau, no previous bill of Petitioner had ever been disallowed.

Five days later, on August 28, 1950, Fullerton recorded a complaint (Ex. 10) from a patient of Petitioner's, Mrs. Noel Edwards, objecting to a bill of $1.50 sent by Petitioner three months previously for services to Mrs. Edwards' infant daughter who accidentally swallowed a poisonous

quantity of sulfa drug not prescribed by Petitioner (R. 1076). These patients were not clients of the Medical Bureau but were private patients of the Petitioner. The child recovered completely under Petitioner's advice (Ex. 10, Ex. 97, p. 21-22); this complaint was the first complaint ever made to a medical body against Petitioner; and Petitioner was not shown (R. 1060, testimony of defendant Stevens) the recorded complaint and did not know such a document existed until he obtained it on subpoena three years later (R. 197, testimony of Robinson).

The Chairman of the secret Grievance Committee, R. W. Stevens, M.D., the only doctor in the fifty year history of the Society who had been previously censured by the Society for misconduct (R. 1062; Ex. 436), then ordered the Bureau manager, Fullerton, to send an unprecedented (R. 1047) official letter on Bureau stationery to Mrs. Edwards criticizing Petitioner's medical service and advising her not to pay the bill for $1.50 (Ex. 15). During the trial, Stevens admitted that the Edwards complaint was totally unjustified:

> "Q. Well, the actual complaint itself, would that, in your opinion, establish any grounds for taking any action against the doctor of any kind, assuming everything in there is true? A. No; it would not, I don't believe." (R. 1065)

When Petitioner learned that this letter was sent out, he took it as a dangerous precedent, the repetition of which could easily curb and destroy any independent doctor's practice. No hearing was held on the complaint, and no member of the secret Grievance Committee talked to the mother or anyone connected with the child (R. 1499, 1064).

On October 11, 1950, in an unprecedented (R. 959-960), unannounced, and unreported meeting of the secret Griev-

ance Committee and the Society Trustees, a second complaint (Ex. 18) against Petitioner was recorded from the father, Thomas Brooks, of Mrs. Edwards who made the first complaint. Brooks' regular occupation was working as a confidential medical investigator for an insurance company which he refused to identify at the trial (R. 1002-3). His complaint alleged that Petitioner threatened to and did expose his syphilis to his son-in-law, Edwards, in retaliation for not showing Petitioner the official letter written by the secret Grievance Committee to Mrs. Edwards about the $1.50 bill.

Brooks' complaint was kept secret from Petitioner for a month (R. 1152, 955, 959, 960 with Ex. 39), until the day after Petitioner lodged written charges against the secret Grievance Committee with the Society trustees along with his petition (Ex. 36) signed by eleven members of the Society calling for a special Society meeting to vote on abolishing the Grievance Committee. Whereupon the defendant officers forthwith informed Petitioner of the Brooks complaint, ordered a hearing by the trustees to be held on it on November 21, 1950; and scheduled the petition-called Society meeting for November 20, 1950 (Ex. 37, 514, 515, 39, and 447), the first Society Meeting ever called on petition in the memory of the defendants (R. 1314).

Brooks and his wife had both been previously discovered by Petitioner to have syphilis, later confirmed by the state medical association (Ex. 104, p. 2), and they and other members of the family had been patients of Petitioner for approximately six months. Petitioner successfully treated Mrs. Brooks' syphilis and the state association later held that "There is no criticism of Dr. Robinson's

treatment in the case of Mrs. Brooks" (Ex. 104, p. 2). But Thomas Brooks was admittedly resentful (R. 1016, 989, 995) of the discovery of the syphilis, and had repeatedly refused for several months Petitioner's request that he also take treatment (Ex. 97, p. 61; R. 1023).

When Petitioner inquired of Brooks why his daughter had made the extraordinary complaint over the $1.50, Brooks testified that he then revealed for the first time (R. 991) that his Wasserman test had been negative when he immigrated into this country three years before, which showed to Petitioner that Brooks' present syphilis was recently acquired and therefore must be considered contagious until treated.

Petitioner then told Brooks that he would not continue as his doctor unless Brooks would agree to treatment (Robinson, R. 256, 653), and unless Brooks would allow Petitioner to see the letter from the secret Grievance Committee which criticized Petitioner's medical services to his granddaughter, the child of Mrs. Edwards. When Brooks refused to meet either of these conditions, Petitioner formally resigned (Ex. 19) from the cases of Mr. and Mrs. Brooks and reported (Ex. 21) their syphilis to the local health department as the law of Washington state provides in all cases of syphilis, and which medical custom everywhere complies with when a syphilitic refuses treatment and thereby jeopardizes the health of the community.

Petitioner did not threaten Brooks with exposure of his syphilis, but Petitioner had the right, although he did not exercise it, under the AMA Code of Ethics to:

> "assure himself that the patient, his relatives, or his responsible friends have such knowledge of the patient's condition as will serve the best interests of the

patient and the family. . . . Sometimes . . . a physician must determine whether his duty to society requires him to employ knowledge, obtained through confidences entrusted to him as a physician, to protect a healthy person against a communicable disease to which he is about to be exposed. In such instance, the physician should act as he would desire another to act toward one of his own family in like circumstances. Before he determines his course, the physician should know the civil law of his commonwealth concerning privileged communications." (Ex. 301, AMA Code of Ethics, Chap. II, Sec. 2, 3, 4)

As a matter of fact, Brooks testified that immediately after Petitioner wrote Brooks a formal letter withdrawing from his case on October 10, 1950 (Ex. 19), which was two days after the alleged threat and revelation of the disease, Brooks went to a partner of one of the defendants (Yengling) and took the very treatment for his syphilis which Petitioner had been urging, with the result that Brooks' positive Wasserman test reverted to normal and he was to all intents and purposes cured:

"A. I was informed by another doctor, who took a test from me on October 9th, 1950, that there was a slight presence in the blood. • • • A. When he informed me, I asked him, well, what could we do about it, and he suggested certain treatments and I took those treatments. Q. And what was the result, if you know? A. The result was he took a spinal test and it was negative. Q. You had positive before that? A. The test was a spinal that he took. Q. And it turned out positive? A. Slightly, yes. Q. And then you took the treatments and it turned out negative? A. Yes." (R. 993)

Petitioner's efforts to do his duty with this patient thus consisted not only of discovering his syphilis in the first

place, but also finally arousing him to his danger and bringing about the treatment which cured him; for all of which Petitioner's reward was expulsion, disgrace, and the ruin of his medical reputation and practice.

On November 20, 1950 the special Society meeting to vote on perpetuation of the secret Grievance Committee was held, and Petitioner and thirteen other members lost in a vote of 14 to 15 on their motion to abolish the committee. After that meeting and vote, one of the defendants expressed their inability to control the opposition aroused by Petitioner:

> "After that last meeting it was seen it was obvious we could not go on." (Ex. 97, p. 48, Yengling)

On November 21, 1950, in the Society trustees' hearing on the Brooks complaint, it was brought out that Brooks had already told his son-in-law, Edwards, about his syphilis prior to the telephone call in which alone Petitioner was accused of revealing the syphilis (Ex. 242, p. 24). The transcript of the hearing records that the Society president, defendant Page, who presided at the hearing, reminded Edwards that Edwards already knew of Brooks' syphilis before Petitioner allegedly revealed it:

> "It was nothing you did not already know" (Ex 242, p. 24).

Yet Petitioner was expelled on the sole charges of threatening to reveal Brooks' disease to his family and of revealing it to the son-in-law (Ex. 104).

Defendants at no time have ever cited or discussed the sections of the AMA Code of Ethics quoted hereinabove, which constitute important exceptions to the general rule about guarding professional confidences.

On December 14, 1950, the annual meeting of the Society was held, in which Stevens, chairman of the secret Grievance Committee, denounced Petitioner, stating among other things:

> " • • • Dr. Robinson's letters that bombarded the society attacking the committee. Even the Russians are babes in the woods in this type of behavior in comparison • • • He has caused a serious division of the Society at a time of national crisis when unity should be uppermost in our minds • • • he has the nerve and guts to denounce an approved policy of the medical profession and its duly appointed officials, and appeals to the Society to support him • • • I am thoroughly disgusted with Dr. Robinson's actions, and do not propose to tolerate any further nonsense • • • " Ex. 384)

The Society Constitution and By-Laws provide that after a trustees' hearing on a complaint, the next step is a vote by the Society as a whole on what discipline if any should be administered (Ex. 429, Chap. II, Sec. 2(b)). However, on December 16, 1950, the defendant officers referred the Brooks complaint to the new state Grievance Committee of the state association, which as late as January 4, 1951 was "in the process of being organized, but is not yet functioning" (Ex. 62).

Petitioner did not know and was not advised of this referral until three months later (Ex. 83). The state Grievance Committee held a hearing, which Petitioner refused to attend in order not to waive his right to have judgment passed upon him by his own local Society, before any intervention by the state association which, under its Constitution, was his next court of appeal after the local Society and was limited to matters of procedure and law and not of fact (Ex. 296).

The state Grievance Committee after its hearing formulated charges of the ethical rule (violation of professional confidence) which Petitioner had allegedly violated, and in concert with the state association trustees recommended to the local Society that he be expelled. The referral to the state and its recommendation were condemned by the AMA Judicial Council when it later declared that Petitioner's expulsion was "invalid and void" and that the state association had "disqualified itself as an impartial tribunal" (Ex. 221).

During the seven months between when the secret Grievance Committee first acted against Petitioner and his expulsion on May 22, 1951, Petitioner advised the defendant AMA repeatedly by regular and registered mail asking that it make a ruling, as was its custom, on the constitutionality of the secret Grievance Committee and the irregular referral to the defendant state association, but the AMA took no action.

On May 7, 1951, the state association sent a nine page report to Petitioner, and to his former patient, Thomas Brooks (Ex. 103), and to the Society trustees, recommending that Petitioner be expelled. The trustees adopted the recommendation, and on May 22, 1951 the report was read in a Society meeting and Petitioner expelled.

Defendants admit (R. 1099, 1245, 1246) that Petitioner was ordered out of the expulsion meeting before any discussion was had by the membership on the matter, in violation of Petitioner's right laid down in the Society Constitution and By-Laws to attend all proceedings (Ex. 429):

> "Section 2. Rights of Members. All members in good standing shall be equally privileged to attend

all meetings and attend all proceedings of the Society" (Ex. 429, Chap. I, Sec. 2).

During Petitioner's absence from the expulsion meeting, defendants admit (R. 1574) that they argued that Petitioner was a dangerous paranoid and that the whole new Grievance Committee System in Washington would collapse unless Petitioner was expelled, which accusations were not contained in the charges against Petitioner and which in his absence he could not rebut, all in violation of his rights under the Society Constitution:

> " • • • full opportunity shall be afforded the accused member to present witnesses and other evidence in his defense and to cross-examine the witnesses and to rebut evidence to sustain charges." (Ex. 429, By-Laws, Chap. II, Sec. 2 (b)).

One of the defendants, Dr. Pratt, made it clear in his deposition that Petitioner was expelled because he criticized the Society officers and the Grievance Committee:

> " • • • they could not tolerate someone upsetting the Board in the Society • • • making disparaging remarks about the Society and the (Grievance) Committee and the officers (R. 1514) • • • Yes, any man that would take it in hand to right a whole profession and was going to reform it • • • I thought, 'Doctors are going to resent these disparaging remarks' • • • You can see what they did. They went ahead here and dismissed him from the Medical Society (R. 1518) • • • if he had retracted some of the remarks he had made and the statements he had made in these numerous letters and offered to cooperate in the affairs and business of the Society, they would have remanded any such action, I am quite sure" (R. 1513).

Another eyewitness at the expulsion meeting, Dr. Sharp, the local public health officer, did not deny that he said Petitioner's expulsion was "slick railroading":

"Q. Did you say that you had seen some Army Court Martials in your day, but that this seemed to you to be as slick a piece of railroading as you ever saw? A. I can't say for sure whether I did or not. Q. Would you say for sure whether you definitely did not say that? A. I can't say for sure (Ex. 294, p. 213).

On June 9, 1951, Petitioner appealed to the AMA, rather than to the state association which would have been his next regular court of appeal, because the state association had already prejudged his case by its recommendation to the local Society to expel him. The Judicial Council did not even acknowledge Petitioner's appeal to it for five months after that appeal was made, despite the fact that this was the only appeal made that year to the AMA Judicial Council. Nothing was heard from the Judicial Council until November 14, when Petitioner telephoned its chairman, Cunniffe. On November 29, 1951, Petitioner received a telegram from Cunniffe scheduling a hearing of the Judicial Council for December 2, 1951. On this day, a decision was reached reversing the expulsion, but no announcement was made until three months later, after urgent remonstrances of Petitioner, and the local Society refused to reinstate Petitioner even after the reversal was announced on February 1, 1952. Instead, the Society on April 8, 1952 secretly obtained the privilege of an unprecedented rehearing on grounds among others that:

"(Petitioner had been) on a crusade to destroy the Grievance Committee. Since the previous August he had carried on an extensive campaign to destroy the local Medical Bureau" (Ex. 207).

Throughout the 14 months between Petitioner's expulsion and his final reinstatement he was without any hospital privileges in accordance with standard agreements between the local hospitals and the local Society which require mem-

bership in the local branch of the defendant AMA as a prerequisite for hospital privileges (R. 397, Oral Opinion of District Court). This prolonged loss of hospital privileges and the public knowledge of same crippled Petitioner's medical practice and forced him to leave town and start over again in Baltimore, Maryland in June of 1953.

The second decision of the defendant AMA on July 15, 1952 reaffirmed its first decision purporting to reinstate Petitioner, but conveyed the meaning that Petitioner was really guilty of unethical conduct and was reinstated only for technical reasons. The Judicial Council Minutes state:

> "The Council continued to discuss the decision to be made in the Robinson appeal, *each member offering suggestions as to how it should be written,* not only to show that the Opinion of the Council is that the procedure followed by the County and State Societies was incorrect, and the previous decision of the Judicial Council sustained, but also *to indicate that evidence presented leads the Council to believe that the appellant is guilty* • • •" (emphasis supplied).

"Evidence" against Petitioner from his opponents was thus accepted and considered by the Council, but the Council had sent Petitioner written instructions specifically forbidding him to present any of his evidence that the complaints against him were false (Ex. 222).

On June 25, 1952, Petitioner filed suit in the Superior Court of Walla Walla County, Washington against all of the present defendants except the AMA, but asked for no damages against the hospitals. In June 1953, Petitioner moved to Baltimore and asked that this suit be dismissed without prejudice, which was done. On May 7, 1954, Petitioner filed substantially the same legal action against the same defendants including the AMA in the United

States District Court for the Eastern Division of Washington, Southern Division.

On October 12, 1954, the AMA was dismissed from the suit on the grounds that it did no business in the state of Washington. The complaint was amended at the same time to include the hospitals in the prayer for damages, for fear that the other defendants could shift the entire burden of injury on to the hospitals where Petitioner lost his staff privileges, as was done in *Weyrens v. Scotts Bluff County Medical Society* (1938), 133 Neb. 818.

Trial without jury was had March 15 to April 5, 1956, and the lower Court dismissed all the defendants, on the merits, at the close of Petitioner's case (exclusive of presentation as to damages), pursuant to Rule 41 (b).

This decision was appealed to the United States Court of Appeals for the Ninth Circuit, a hearing was held November 7, 1957, and an Opinion upholding the lower court was filed November 20, 1957. Petitioner filed a petition to stay mandate and to tax unnecessary costs of printing record against appellees on December 23. 1957, and this was denied on December 31, 1957.

OPINION OF THE UNITED STATES COURT OF APPEALS

The opinion filed by the Court of Appeals is printed in an appendix hereto. The Appeal Court's first comment is that Petitioner no longer was represented by counsel when he took his appeal. Lest it be thought that his former counsel regarded his case as of no merit, it should be stated that Petitioner discharged his counsel for unjustified actions against his interests in both this case and Petitioner's parallel case against the defendant AMA in the District

Court of Chicago, which actions included attempts to force Petitioner to pay an unnecessary extra sum of $2,000.00 to the Court reporter of the Washington District Court for an original copy of the trial transcript, on the invalid ground that the extant carbon copy already paid for by Petitioner would not be acceptable to the Clerk of the Appeal Court; vigorous attempts to prevent Petitioner from filing an affidavit of fact in the Chicago case which counsel there had promised in writing to file in answer to one filed by the defendant AMA, and up until the very last minute had neither prepared nor filed same; and other inexcusable actions all of which Petitioner has described, documented and filed in the Chicago case.

The Appeal Court's statement that "The evidence is largely undisputed" is not borne out by the testimony and exhibits cited by Petitioner herein and in his appeal brief.

The opinion deals at length with the $1.50 complaint without considering any of the extraordinary circumstances surrounding it, such as concealment from Petitioner of the written complaint, the unprecedented letter advising that this miniscule bill be not paid which was composed by the chairman of the Secret Grievance Committee who had to admit in court that the complaint was worthless, the star chamber nature of the Grievance Committee, and the remarkable timing of this complaint with Petitioner's resignation from the Medical Bureau.

Such petty but determined tyranny coupled with the Bureau monopoly quite properly inspired the Petitioner to vigorous letters which, as noted herein, were no longer than he got back from his opponents (Ex. 13) on the subject.

The Appeal Court deems it worthwhile to mention that the Edwards were "incensed" over the $1.50 bill, but this

merely countenances the falsehood of defendant Stevens who stated, "* * * when this patient made the complaint to Mr. Fullerton they were very upset and they were threatening to sue for mal-practice and we were trying to keep from dragging this thing before the public for the matter of $1.50" (Ex 97, p. 17); whereas Mrs. Edwards testified that it was not a "complaint" or a "protest" which she made, but "I registered an inquiry" (R. 1434), and Mr. Edwards testified that "we didn't consider a complaint at any stage of the journey whatsoever" (R. 1261).

As to the Brooks complaint, only one of the charges on which Petitioner was expelled, the alleged threat to reveal the disease, is mentioned; and no reference is made either to the Code of Ethics involved nor the circumstances of Petitioner's professional relationship with the patient, both of which invalidate this charge. The other charge of alleged revelation of the disease to Edwards is not mentioned, perhaps because defendant Page's admission in the record that Edwards already knew about the disease (Ex. 242, p. 24) invalidates this charge.

With regard to the "many attempts to obtain the original of the letter" cited by the Appeal Court, the record shows that Petitioner talked with Mr. and Mrs. Edwards twice and with Brooks twice, in all cases the subject being the preposterous $1.50 complaint and Brooks' refusal to take treatment for a serious disease which Petitioner did not specify to the Edwards. (Ex. 242, p. 28, 29; R. 1387; 1191; for analysis see item 5, pp. 37-39 in Appellant's Brief.)

Just as in the law on conspiracy cited at the end of the Appeal Court's opinion, "Where the facts and circumstances relied upon to establish a conspiracy are as consistent with a lawful or honest purpose as with an unlawful undertaking, they are insufficient", so when it comes to

taking Brooks' unsubstantiated word against Petitioner's that a threat was made to expose his disease, due weight must be given to the fact that Petitioner's actions were wholly consistent with a lawful and honest purpose in the performance of his duty to the patient, his family, and the public. The frequency with which both Brooks and Edwards, as well as many of the defendant doctors, perjured themselves by their own testimony alone also supports Petitioner. Analysis of this perjury is found in Petitioner's brief for the appeal court.

If it is not permissible here to argue the basic falsity of the complaints against Petitioner, it remains to emphasize that the condemnation by the AMA of the procedures used to expel Petitioner establish that he did not have a fair trial when he was expelled. It is unquestionably the law that in cases of appellate tribunals, the courts will not interfere with their construction of their own laws. *Simpson* v. *Grand International Bro. of Locomotive Engineers*, 98 SE 580; Cert. Den. 39 S Ct. 494; *Payne* v. *Mutual Relief Soc.*, 27 Pac 191 (Cal); *Scriveners Benevolent Assn* v. *Benson*, 12 SW 379 (Tex); *Noel* v. *Modern Woodsmen of America*, 61 Ill App 597; *Spelman* v. *Supreme Council*, 31 NE 776 (Mass); *Wilcox* v. *Supreme Royal Arcaanum*, 104 NE 192; *Stevenson* v. *Holstein Fresian Assn.*, 30 Fed (2nd) 625.

The Appeal Court states that Petitioner was present at the expulsion meeting, but the defendants testified otherwise:

> "A. After Dr. Robinson was excused from the meeting, I declared the meeting, the body, a jury" (R. 1245, Tompkins testimony).
>
> "Q. Were there any statements made before Dr. Robinson left the meeting? A. I don't recall any, I

do not believe there were." (R. 1246, Tompkins testimony.)

The Appeal Court states that "Had appellant's expulsion been actuated through malice or bad faith on the part of the local body of doctors acting in concert he would have been entitled to a judgment in damages." Obviously, whatever the defendant doctors did with respect to Petitioner was done in concert since they were all officers of the Society claiming to process a complaint against Petitioner. They did not have to exercise malice in the ordinary sense of the term, for as said in *Sears* v. *International Bro. of Teamsters, etc.*, 8 Wash (2nd) 453, "The definitions of conspiracy in many instances use the word 'malicious' as an element necessary to be established. That however does not necessarily mean ill will or actual malice but does mean an intentional interference with a right without lawful justification and, as such, is malicious in law * * *". The same doctrne is held in *Bitterman* v. *Louisville & N R R Co.*, 207 U S 205, 223; *R & W Hat Shop* v. *Scully*, 98 Conn 1; 29 ALR 551.

That good faith was not shown by defendants, and that the expulsion charges were merely a pretext, should be clear from the record quoted in this petition.

Even if proof of conspiracy fails, recovery may yet be had against the defendant or defendants who committed an overt act charged in the complaint which resulted in damages since civil conspiracy is not the gravamen of the offense: *11 Am Jur* p. 588; *Howard* v. *McCorson*, 110 So 296 (Ala); *Franklin* v. *Erickson*, 146 A. 437; *Media* v. *Stippec*, 73 SW (2nd) 998; *Pyle* v. *Armstrong*, 275 Pac 753 (Montana); *Gabriel* v. *Collier*, 29 Pac (2nd) 1025 (Ore).

REASONS FOR GRANTING THE WRIT

1. Just as this Honorable Court recently protected the rights of dissident physicians banded together in a group (*American Medical Association* v. *United States*, 317, U. S. 519), so also should the rights of individual physicians be protected in like circumstances. The defendant Medical Bureau, owned and operated by the Walla Walla branch of the defendant AMA, is a monopoly, and this Court has held that at the common law, the term "restraint of trade" was deemed to cover the practice of medicine (Ibid, 528), and that:

> "* * * it cannot be admitted that the medical profession may through its great medical societies, either by rule or disciplinary proceedings legally effectuate restraints as far reaching as those now charged * * *" (Ibid, 712).
>
> "Organizations and rules which have as their purpose the improvement of conditions in any particular trade or occupation, and the regulation of relations between traders, are, as we have just pointed out, beneficial rather than detrimental to the public interest. But when these same organizations go so far as to impose unreasonable restraints on the operations in their field, they become subject to the prohibition of the Sherman act. *Sugar Institute* v. *United States*, 297, U. S. 553, 597-600, 56 S. Ct. 629, 80 L. Ed. 859." (Ibid 712)

It is of great public importance that individual physicians such as your Petitioner have the right of free speech and of fair treatment and of adequate opportunity without suffering reprisals to criticize both the quality of medical service and the economic features of the vast new medical bureaucracies which now dominate American medicine. History shows that when the chips are really down, sometimes only the lone individual is free enough from entangling

alliances to take a strong stand against a lucrative but dangerous trend.

For the first time in our history, the practice of medicine is now largely controlled not by the patient but by third parties such as the defendant Medical Bureau, Blue Shield, Blue Cross and other agencies more and more under the domination and control of the defendant AMA and its local branch societies. Such medical businesses already take in over three billion dollars a year and aim at the total of over nine billion which the public spends each year on medical care. As was said in *Pocahontas Coke Co.* v. *Powhatan Coal & Coke Co.*, 60 W. Va. 508, 56 S. E. 264, the monopolistic character of a combination is not to be tested by what has been done under it, but what may be done under it; "not by its performance, but by its powers of performance when fully executed." See also, *Assoc. Press* v. *United States*, 326, U. S. 1, 12, 89 L. Ed. 2013, 65 S. Ct. 1416.

If individual doctors are not allowed to criticize their own union, we then have no authority on the inside to evaluate the new medical system; and it cannot be expected that the vested interests of the new bureaucracies will criticize their goose which lays the golden eggs. The local branches of the defendant AMA have motives and financial incentives very different and much more powerful than was the case a few years ago when they were no more than fraternal organizations interested in scholarship and fellowship.

2. Petitioner submits that the judgment of the lower Court violated the Fifth Amendment of the Constitution of the United States, when it sanctioned the deprivation of a property right of Petitioner without due process of law. Membership in the local medical society is a valuable prop-

erty right (*Reid* v. *Medical Society of Oneida County*, 15 NYS 780). The AMA Judicial Council decision established that Petitioner lost this property right without due process of medical law, and Petitioner was denied recourse to the civil law courts by the rigid doctrine of exhaustion of internal remedies which, as the record shows, were dragged out to the point where justice delayed was justice denied.

The law is fully settled (see 20 *ALR* 2nd, 344) that the civil courts, in cases of expulsion from professional organizations, will review denial of fair hearing or fair trail, lack of notice of charge, lack of adequate opportunity to defend self, violation of public policy, insufficiency of accusation, and irregularity in expulsion procedures, all of which took place in Petitioner's case, but such review comes too late if the appellate bodies of the professional organization drag out their procedures.

It is well known nowadays, as in the much publicized case of the New York City Teamsters, that the leaders of powerful unions commonly suppress the democratic opposition of members, by the abuse of constitutional procedures and parliamentary tricks. Wherefore, the lower civil courts should exercise scrupulous care to examine such cases, and not multiply the delay by abusing the discretion to dismiss under Rule 41 (b) as in Petitioner's case, which makes ultimate justice practically unobtainable from the standpoint of time alone.

3. Petitioner submits that the judgment of the lower Court violated the Sixth Amendment of the Constitution of the United States when it sanctioned the punishment of Petitioner by an expulsion which violated his right "to be informed of the nature and cause of the accusation." Major accusations against Petitioner, made at the expulsion meeting in his absence, kept secret from him, and not contained

in the charges, were that he was afflicted with a paranoid type of insanity and that he was a menace to the new disciplinary system of which the secret Grievance Committee was the local embodiment. Petitioner was given no opportunity to rebut these highly inflammatory accusations.

4. Petitioner submits that the judgment of the lower Court violated the First Amendment of the Constitution of the United States when it sanctioned the expulsion and punishment of Petitioner for exercising his right of free speech and criticism of affairs in his medical union.

5. Petitioner submits that the lower Court erred in dismissing the defendant American Medical Association on the grounds of not doing business in the state of Washington, since the AMA annually collects $25.00 from practically every one of Washington's doctors, totalling $75,000.00; and this figure has been doubled by assessments; and fraternal organizations have been held to be subject to service in states where they promote and carry out their purposes and activities, including the collection of dues and the promulgation of policies and directives. (*Pacific Typesetting Co.* v. *International Typographical Union,* 125 Wash. 273, 216 Pac. 358; *Barrett Mfg. Co.* v. *Kennedy,* 73 Wash. 503; *International Shoe Co.* v. *State,* 22 Wn (2nd) 146, 171; *Beach* v. *Kerr Turbine Co.,* 243 Fed. 706; *Pierce* v. *Grand Army of the Republic,* 20 NW (2nd) 489; *State ex rel Guernsey Newton Co.* v. *Superior Court,* 36 Wash. 653, 658; *Bankers Holding Corp.* v. *Mayberry,* 161 Wash 681, 687; *State ex rel Columbia etc. Co.* v. *Superior Court,* 1 Wn (2nd) 380.

6. In accordance with Rule 38 of this Honorable Court which states that Certiorari may be granted when the Appeal Court has "so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned

such a departure by a lower court, as to call for an exercise of this Court's power of supervision", Petitioner submits that the Appeal Court unreasonably impeded and discouraged Petitioner's appeal to it by requiring him, despite a careful protest filed in the case, to contract for printing the entire reporter's transcript of the trial, at a cost of $7,050.00. And when defendants made almost no reference to the part which they had designated for printing, amounting to more than half of the transcript, the Appeal Court denied Petitioner's petition to require defendants to pay for what they had designated and not used.

CONCLUSION

The position of the defendants is that the need to establish bureaucratic prepaid medical care controlled by the defendant AMA and its local branches is imperative in order to ward off bureaucratic medicine controlled by the government. But if tyrannical methods are used to establish or maintain a private medical monopoly, as in Petitioner's case, then the democratic procedures which are the strength of this country are destroyed, control passes from the public to monopolistic, profiteering, and blind vested medical interests, and the cure advocated by organized medicine may be worse than the alleged disease threatened by the proponents of government medicine.

It cannot be accurately foreseen how our medical care system will be financed and controlled in a changing world; but we can be certain that no new system will be good which is based on the suppression of free speech, the violation of contract rights between physician and his union, and a lucrative monopoly which by the doctrine of exhaustion of internal remedies is so far beyond the ordinary reach of public courts of law.

WHEREFORE: Petitioner prays that a writ of Certiorari issue under Seal of this Honorable Court directed to the United States Court of Appeals for the Ninth Circuit commanding said Court to certify and send to this Honorable Court a full and complete transcript of the record and proceedings had in this case to the end that the Order in so far as appealed from by the Petitioner be reviewed and determined by this Honorable Court as provided for by the Statutes of the United States; modification of the Order of the Court of Appeals for the Ninth Circuit to the extent of directing that the Petition for Writ of Certiorari issue; and for such other, further, and equitable relief as this Honorable Court may deem just and proper in the premises.

Respectfully submitted,

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Petitioner, pro se.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MILES H. ROBINSON,

Appellant,

vs.

R. W. STEVENS, et al.,

Appellees.

No. 15,280
Nov. 20, 1957

Appeal from the United States District Court for the Eastern District of Washington, Southern Division.

Before: STEPHENS, Chief Judge, and HEALY and HAMLEY, Circuit Judges

HEALY, Circuit Judge

Appellant, a practicing physician at Walla Walla, Washington, was expelled from membership in the local medical society on complaint of the grievance committee of the physicians at Walla Walla. Upon his appeal to the American Medical Association he was ordered reinstated on procedural grounds. He then brought suit for damages against

all the physicians who had had any connection with his expulsion and against the local, state, and national medical societies and several hospitals, alleging that they had conspired to injure him and his reputation.

The suit was tried before the court (Judge Driver) sitting without a jury. The trial was extensive, 21 witnesses testifying in person and six by disposition. On the conclusion of the case for the complainant the court found for the defendants on the ground that no showing of bad faith on their part had been made out, and that no conspiracy among them existed as charged by the complainant. Findings of fact and conclusions of law were made, and the Judge in an extensive memorandum opinion developed the grounds of his decision. This appeal followed.

On the trial below appellant was represented by counsel; here he has chosen to act as his own attorney. His sole contention is that the trial court erred in finding that the defendants acted in good faith. With this contention we are unable to agree.

The evidence in the case is largely undisputed. In 1950 the local (Walla Walla) medical society organized a grievance committee of three doctors for the purpose of considering complaints from the public and attempting to iron them out. The defendant Stevens was head of this committee and a layman named Fullerton was appointed to serve as secretary. Late in 1950 a complaint was received from one Edwards objecting to a charge of $1.50 made by appellant for advice given Edwards over the telephone. The advice was in consequence of Edwards' informing appellant of his child's having swallowed a quantity of Ex-lax. Apparently there was a misunderstanding between appellant and Edwards in that the latter was expecting that a prescription would be sent him and none was sent. The child suffered no ill effects, but Edwards was incensed at the charge made. Stevens, as representative of the grievance committee, tried to work this difficulty out. He talked with appellant but the latter refused to discuss the matter. Finally a letter was written Edwards by the

grievance committee stating in substance that while the charge was unusual it was perfectly proper, and that the committee would recommend in light of the misunderstanding as to the sending of a prescription that Edwards not pay the bill. Upon learning of this communication appellant wrote an angry letter blasting the grievance committee for their action in writing his patient. The letter was very long and, as the court found, was intemperate and unjustified in its charges against the committee. This letter, headed "Dear Doctor," was the first of many of like tenor that were sent by appellant to numerous of the physicians practicing in the area.

Following this, the record indicates that appellant made many attempts to obtain the original of the letter which had been written to Edwards by the local committee. With this purpose in mind he contacted Edwards and members of his family, and these activities led to the so-called "Brooks' complaint" which formed the basis of appellant's expulsion from the local society. Brooks was the father of Mrs. Edwards, and he and his wife were patients of appellant. Brooks complained to the local medical society that appellant told him that he (Brooks) had syphilis and that unless he got for appellant the original of the letter sent Edwards by the local grievance committee he (appellant) would inform Brooks' family of the disease and would turn Brooks' case over to the public authorities.

The trustees of the local medical society heard Brooks' complaint (appellant being present at the hearing), and subsequently decided to submit the charge to the state grievance committee. The latter committee had a hearing to which appellant was invited but which he declined to attend. The hearing resulted in appellant's being found guilty of unethical practice, and the committee recommended his suspension from the local society for a period of six months. The recommendation was approved by the state medical society.

Later the trustees of the local society considered the Brooks' complaint and found appellant guilty of unethical

practice. Still later the local society held a meeting at which appellant was present and at which he pleaded his own defense, and the society voted to expel him. Thereupon appellant took an appeal to the judicial council of the American Medical Association,[1] and, as already indicated, that body reversed the local society on procedural grounds. Appellant was thereupon reinstated in the local society.

Had appellant's expulsion been actuated through malice or bad faith on the part of the local body of doctors acting in concert he would have been entitled to a judgment in damages. However, the trial court found that the local group acted in good faith. and we see no error in the finding. Under the law of the State of Washington, a civil conspiracy must be proved by clear, cogent and convincing evidence. Chesman v. Sathre, 45 Wn. 2d 193, 273 P. 2d 500. As stated in Harrington v. Richeson, 40 Wn. 2d 557, at 573, 245 P. 2d 191, at 199, "Where the facts and circumstances relied upon to establish a conspiracy are as consistent with a lawful or honest purpose as with an unlawful undertaking, they are insufficient."

Affirmed.

(Endorsed:) Opinion. Filed Nov. 20, 1957.

—Paul P. O'Brien, Clerk.

[1] The American Medical Association was originally included as a party defendant, but was dismissed as such prior to the trial on the ground that it did no business in the State of Washington.

PRINCIPLES OF MEDICAL ETHICS OF THE AMA

Chapter II

PATIENCE, DELICACY, AND SECRECY

Sec. 2.—Patience and delicacy should characterize the physician. Confidences concerning individual or domestic life entrusted by patients to a physician and defects in the disposition or character of patients observed during medical attendance should never be revealed unless their revelation is required by the laws of the state. Sometimes, however, a physician must determine whether his duty to society requires him to employ knowledge, obtained through confidences entrusted to him as a physician, to protect a healthy person against a communicable disease to which he is about to be exposed. In such instance, the physician should act as he would desire another to act toward one of his own family in like circumstances. Before he determines his course, the physician should know the civil law of his commonwealth concerning privileged communications.

PROGNOSIS

Sec. 3.—The physician should neither exaggerate nor minimize the gravity of a patient's condition. He should assure himself that the patient, his relatives or his responsible friends have such knowledge of the patient's condition as will serve the best interests of the patient and the family.

THE PATIENT MUST NOT BE NEGLECTED

Sec. 4.—A physician is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency or whenever temperate public opinion expects the service. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving notice to the patient, his relatives or his responsible friends sufficiently long in advance of his withdrawal to allow them to secure another medical attendant.